

PATENT

Docket No. AUS920010547US2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE: **Appeal No. 2006-2852**

INVENTOR: **A.E. Mericas**

Examiner: J. West

APPLICATION NO.: **10/733,443**

Art Unit: 2857

FILED: **December 10, 2003**

Confirmation No. 2319

TITLE: **EXTENDING WIDTH OF PERFORMANCE MONITOR  
COUNTERS**

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FILED ELECTRONICALLY ON August 22, 2006

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Commissioner for Patents

MAIL STOP APPEAL BRIEF-PATENTS

P.O. Box 1450

Alexandria, VA 22313-1450

**Attention: Board of Patent Appeals and Interferences**

**APPELLANTS' REQUEST TO STRIKE**

This Request is in response to the Examiner's "Response to Reply Brief" mailed on July 26, 2006.

**The Examiner's "Response to Reply Brief" Is Improper and Should Be Stricken**

The Examiner's Response to Reply Brief mailed on July 26, 2006 appears to be an Examiner's Response to Reply Brief under 37 CFR §41.43. Under 37 CFR §41.43, the primary Examiner may furnish a Supplemental Examiner's Answer responding to any new issue raised in the Reply Brief.

As set forth in M.P.E.P. §1207.05, "the Examiner cannot issue a Supplemental Examiner's Answer if the Reply Brief raised no new issue." Further, "every Supplemental Examiner's Answer must be approved by a Technology Center (TC) director or designee. *M.P.E.P. §1207.05*. The Examiner has neither asserted that the appellant has raised new issues, nor provided any evidence of approval of by a Technology Center director. Accordingly, Appellant respectfully requests the Board to strike the Examiner's Response to Reply Brief filed on July 26, 2006, and remove it from consideration in the pending appeal.

Respectfully submitted:

August 22, 2006  
Date

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